

UNITED STATES OF AMERICA
UNITED STATES COAST GUARD vs.
LICENSE NO. 05295
Issued to: William Henry HARDSAW

DECISION OF THE COMMANDANT
UNITED STATES COAST GUARD

2138

William Henry HARDSAW

This appeal has been taken in accordance with Title 46 United States Code 239(g) and Title 46 Code of Federal Regulations 5.30-1.

By order dated 13 October 1977, as amended 17 October 1977, an Administrative Law Judge of the United States Coast Guard at San Francisco, California suspended Appellant's seaman's documents for three months upon finding him guilty of negligence. The specification found proved alleges that while serving as OPERATOR on board the TUG COLUMBIA, O/N 516116 under authority of the license above captioned, on or about 15 September 1977, Appellant did negligently fail to correctly ascertain the height of his tow prior to attempting to pass under the San Francisco-Oakland Bay Bridge and as a result of that negligence collided with the Bridge causing damage to the Bridge and the tow.

At the hearing, Appellant was represented by professional counsel and entered a plea of guilty to the charge and specification.

The Investigating Officer introduced in evidence the unsworn statements of the Appellant and one witness, and three items of documentary evidence.

Appellant offered no evidence in defense.

After the hearing, the Judge rendered a decision in which he concluded that the charge and specification had been proved by plea. He then entered an order suspending Appellant's license for a period of three months outright.

The entire decision was served on 17 October 1977, and appeal was timely filed.

FINDINGS OF FACT

On 15 September 1977, Appellant was serving as operator on board the Tug COLUMBIA O/N 516116 and acting under authority of his license while the tug was pushing ahead the crane barge JAN D in

San Francisco Bay. Having failed to ascertain the height of a crane that was loaded on the barge, Appellant attempted to push the barge under a span of the San Francisco-Oakland Bay Bridge which only had a clearance of 184 feet causing damage to the bridge and barge. Appellant first learned that the height of the crane was 195 feet above the waterline after the allision when he called his office via VHF.

BASES OF APPEAL

This appeal has been taken from the order imposed by the Administrative Law Judge. It is contended that:

- (1) The sentencing procedures denied the Appellant due process of law in that the existence of and the Administrative Law Judge's (ALJ's) reference to the "Scale of Average Orders" (46 CFR 5.20-165) placed an unreasonable restraint upon his exercise of judicial discretion; and
- (2) the Chief ALJ's review of the penalties assessed by the ALJ also imposes an unreasonable restraint upon the ALJ's judicial discretion and amounts to improper "command influence."

APPEARANCE: John E. Droeger, Esq. Lyman Henry, Esq. of Hall, Henry, Oliver and McKeary, San Francisco, California.

OPINION

I

Appellant first contends that he was denied due process of law because the Administrative Law Judge's (ALJ) reference to the "Scale of Average Orders" (46 CFR §5.20-165) imposed an unreasonable restraint upon the ALJ's judicial discretion. This argument is without merit. As the cited regulation states, "The Table 5.20-165 is for the information and guidance of administrative law judges. The orders listed for the various offenses are average only and should not in any manner affect the fair and impartial adjudication of each case on its individual facts and merits" (46 CFR §5.20-165 (a)). Additionally, I have stated in prior decisions that "The scale provided is merely for guidance and the Administrative Law Judge are not bound thereby. The degree of severity of the order is a matter peculiarly within the discretion of the Administrative Law Judge and will be modified on appeal only upon a clear showing that it is arbitrary or capricious" (Appeal Decision 2002 (ADAMS)).

Appellant's second contention is equally unsound. Appellant contends that the Chief ALJ's review of the orders entered by the ALJs imposes an unreasonable restraint upon the ALJs' judicial discretion and amounts to improper "command influence". It is the duty of the Chief ALJ and agency policy requires that he review the written decisions and orders of each administrative law judge assigned to conduct a hearing under 46 U.S.C. §239 and 239b (46 CFR §1.10(c)(4)). There has been no showing of special influence on the ALJ in this case.

CONCLUSION

The Administrative Law Judge's finding of guilty of negligence was supported by Appellant's plea of guilty (46 C.F.R. §5.20-155(b)) and substantiated by evidence of a reliable and probative nature.

ORDER

The order of the Administrative Law Judge dated at San Francisco, California on 13 October 1977, as amended on 17 October 1977, is AFFIRMED.

R. H. SCARBOROUGH
VICE ADMIRAL, U. S. COAST GUARD
Vice Commandant

Signed at Washington, D.C., this 8th day of November 1978.

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